

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

MARTÍN JONATHAN BATALLA VIDAL,
et al.,

Plaintiffs,

v.

ELAINE C. DUKE, *et al.*,

Defendants.

No. 1:16-cv-04756 (NGG) (JO)

STATE OF NEW YORK, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, *et al.*,

Defendants.

No. 1:17-cv-05228 (NGG) (JO)

MOTION TO ADJOURN NOVEMBER 8, 2017 STATUS CONFERENCE

In accordance with the Court's September 27, 2017 Case Management and Scheduling Order, *Vidal* ECF No. 67, and the Court's scheduling orders of October 2, 2017, October 11, 2017, and October 23, 2017, Defendants respectfully request that the status conference currently scheduled for 2:00 p.m. on Wednesday, November 8, 2017, be adjourned indefinitely. As good cause for this request, Defendants offer the following:

1. Pursuant to the Court's October 11, 2017 Order, *Vidal* ECF No. 81, the next regularly scheduled status conference in these matters is set for November 8, 2017 at 2:00 p.m. The purpose of this status conference is to discuss any pending discovery (or administrative record)

disputes between the parties. Other similar status conferences are also scheduled for November 30, 2017, at 2:00 p.m. and December 13, 2017 at 2:00 p.m.

2. In the Court's September 27, 2017 Minute Order, the Court contemplated that the parties would request adjournment or cancellation of these status conferences if they proved to be unnecessary. *See* Sept. 27, 2017 Order § III(a) ("If there are no pending disputes requiring court intervention, I will entertain a joint application to adjourn or cancel the conference.").

3. On October 20, 2017, the United States Court of Appeals for the Second Circuit issued an order staying all "discovery and record supplementation" in these matters pending further consideration of Defendants' petition for a writ of mandamus. *See* Order, *In re Duke*, No. 17-3345 (2d Cir. Oct. 20, 2017) (Cabranes, J.), *Vidal* ECF No. 91.

4. On October 24, 2017, a three-judge panel of the Court of Appeals extended that stay "until determination of the mandamus petition" filed by the government, and also noted that "[r]esolution of the mandamus petition is deferred until such time as the District Court has considered and decided expeditiously issues of jurisdiction and justiciability." *See* Order, *In re Duke*, No. 17-3345 (2d Cir. Oct. 24, 2017), *Vidal* ECF No. 99.

5. Because all discovery and record supplementation have been stayed by the Court of Appeals, there are currently no active discovery or record-related disputes to be resolved by this Court, and therefore there is currently no need for this Wednesday's status conference.

6. If, at some future date, the Court of Appeals lifts its stay, Defendants are willing to confer promptly with both sets of Plaintiffs and jointly propose another date (or dates) for a status conference (or conferences) to discuss further proceedings in these matters.

7. As for the other two status conferences that are currently on the calendar, the parties and the Court may revisit the question of whether those status conferences are necessary as those

dates approach, perhaps with the benefit of further guidance from the Court of Appeals about the nature of future proceedings in this matter.

8. Granting the requested relief will not effect any other deadlines.

9. This is the second request for an adjournment in these matters. On October 23, 2017, this Court granted a similar request, *Vidal* ECF No. 92, with respect to the status conference that had been scheduled for October 25, 2017.

10. Undersigned counsel for Defendants contacted counsel for each group of Plaintiffs before filing this motion. The *State of New York* Plaintiffs reported that they “do not consent to Defendants’ motion to adjourn the November 8th status conference indefinitely,” but they “do not object to adjourning the status conference as long as the stay on discovery is still in effect.” The *Vidal* Plaintiffs reported that they “do not consent to Defendants’ motion to adjourn indefinitely the November 8 status conference,” but also noted that “if the discovery stay is still in place as of [] Wednesday, [they] do not oppose adjourning the status conference for that day.”

Dated: November 6, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

BRIDGET M. ROHDE
Acting United States Attorney

BRETT A. SHUMATE
Deputy Assistant Attorney General

JENNIFER D. RICKETTS
Director, Federal Programs Branch

JOHN R. TYLER
Assistant Branch Director

BRAD P. ROSENBERG
Senior Trial Counsel

/s/ Stephen M. Pezzi

STEPHEN M. PEZZI (D.C. Bar #995500)

KATE BAILEY

Trial Attorneys

United States Department of Justice

Civil Division, Federal Programs Branch

20 Massachusetts Ave., N.W.

Washington, DC 20530

Tel.: (202) 305-8576

Fax: (202) 616-8470

Email: stephen.pezzi@usdoj.gov

JOSEPH A. MARUTOLLO

Assistant U.S. Attorney

United States Attorney's Office

Eastern District of New York

271-A Cadman Plaza East, 7th Floor

Brooklyn, NY 11201

Tel: (718) 254-6288

Fax: (718) 254-7489

Email: joseph.marutollo@usdoj.gov

Counsel for Defendants